IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7630 of 2007
To
SPECIAL CIVIL APPLICATION No. 7703 of 2007
With
SPECIAL CIVIL APPLICATION No. 7631 of 2007
To
SPECIAL CIVIL APPLICATION No. 7703 of 2007
With
SPECIAL CIVIL APPLICATION No. 26774 of 2006
To
SPECIAL CIVIL APPLICATION No. 26900 of 2006
With
SPECIAL CIVIL APPLICATION No. 26928 of 2006
To
SPECIAL CIVIL APPLICATION No. 26934 of 2006
With
SPECIAL CIVIL APPLICATION No. 1070 of 2007
To
SPECIAL CIVIL APPLICATION No. 1231 of 2007
With
SPECIAL CIVIL APPLICATION No. 1307 of 2007
To
SPECIAL CIVIL APPLICATION No. 1361 of 2007
With
SPECIAL CIVIL APPLICATION No. 5436 of 2007
To
SPECIAL CIVIL APPLICATION No. 5476 of 2007
With
SPECIAL CIVIL APPLICATION No. 17735 of 2006
With
SPECIAL CIVIL APPLICATION No. 22059 of 2006
With
SPECIAL CIVIL APPLICATION No. 22061 of 2006
With
SPECIAL CIVIL APPLICATION No. 22064 of 2006
With
SPECIAL CIVIL APPLICATION No. 26431 of 2006
To
SPECIAL CIVIL APPLICATION No. 26432 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINCHANDRA MANILAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MUKUND M DESAI for Petitioner(s) : 1,
MR SUNIT SHAH, GOVERNMENT PLEADER WITH AGP MR APURVA DAVE, AGP MR SHIVANG SHUKLA, AGP MR DASHRATH CHAUHAN, AGP MR KALPESH PANDIT for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 23/03/2007

ORAL JUDGMENT

1. Heard learned advocate Mr. M.M. Desai appearing on behalf of petitioners and learned Government Pleader Mr. Sunit Shah with learned AGP Mr. Dave, learned AGP Mr. Shukla, learned AGP Mr. Chauhan and learned AGP Mr. Pandit appearing on behalf of respondents – State Authorities.

2. The other identical matters in respect to same issue have been admitted by this Court which are on today's Board. Therefore, this group of matters are also require to be admitted by this Court. Hence, **Rule** in each petition. Learned Government Pleader Mr. Sunit Shah with learned AGP Mr. Dave, learned AGP Mr. Shukla, learned AGP Mr. Chauhan and learned AGP Mr. Pandit waive service of notice of rule on behalf of respondents – State Authorities. With consent of both the learned advocates, these group of petitions are heard finally today.

3. The concise facts of the present petitions is that the petitioners are working as Lecturer initially in Sir K.P. College of Commerce, Athwa Lines, Surat which is affiliated to South Gujarat University, now, Vir Narmad South Gujarat University and served there since many years. In the group of petitions, some of the petitioners had already retired and some of the petitioners are likely to retire in near future.

4. According to petitioners, in case, if, they opt for voluntary retirement, then, petitioners may not entitle for pensionary benefits. Therefore, there is no other option/alternate left for the petitioners except to challenge the inaction on the part of the State Government that inspite of inviting option from the college employees recently the State Government had decided not to give option for pension on account of financial constraints. Therefore, petitioners have no other option to challenge such inaction on the part of the State Government.

5. According to petitioners, the pension scheme was introduced by the State Government vide Government Resolution dated 15th October 1984, whereby, pension scheme has been made applicable to college teachers affiliated to different University of the State and the cut of date for option was given as 1st April 1985. As per scheme, one has to either opt for pension scheme or to

continue with CPF. At the time of introduction pension scheme, the benefits were not explained and conveyed in proper perspective to the employees and therefore, petitioners are remained continued in CPF scheme.

6. According to petitioners, recommendations of Malhotra Pay Commission have been accepted by the State Government and pay scale was revised and pension option was invited vide Government Resolution dated 11th October 1988. In Government Resolution dated 17th September 1991 which was issued by the State Government raising the gratuity limit, wherein, a passing reference of option for pension has been mentioned. The recommendations of Rastogi Pay Commission have been accepted by the State Government and Government Resolution dated 7th September 1998 has been issued and pension scheme was also liberalised by Government Resolution dated 10th October 1998. On behalf of petitioners, teachers' Association as well as Registrar of Sardar Patel

University and In-charge Registrar of Gujarat University made representation to the State Government. Subsequently, meeting was held in presence of representatives of different Associations of the teachers serving in different colleges of the different University with Minister of Education Department, Secretary of Education Department and Secretary of Finance Department. Thereafter, High Power Committee was appointed consisting of Vice Chancellors of different Universities, Secretary, Education and Technical Department, etc., and the Committee recommended to give one more option to pension scheme. However, according to the petitioners, State Government has sent letter to the Colleges inviting options to the teachers who have been left out and not opted for the pension scheme. The concerned college and teacher sent their option, but, State Government has not accepted the same on the ground that it will have to shoulder burden of heavy financial liabilities. The University Grant Commission wrote one letter

dated 17th May 2005, wherein also, it has been recommended that option to be given to concerned petitioners. The State Government accepted the recommendations of 5th Pay Commission as well as the decision of University Grant Commission, though pension is not given to the teachers like petitioners inspite of the fact that they have rendered the same length of service. Similarly, in one case, there are about 27 persons who have not opted for pension scheme. However, State Government granted pension to them under special consideration in gross violation of right to equality guaranteed under Article-14 of the Constitution of India.

7. According to the petitioners, number of representations have been made time and again with the respondents, but, ignored by State government and remained undecided which adversely affected the right of petitioners to get compensatory benefits as other similarly situated employees are getting the same benefits. The only

dispute about option not submitted in time as and when it was demanded by the State Government. Now, State Government is not giving any concession for submitting the option by the petitioner for getting the benefit of pension or not prepared to consider the case of petitioners because of at the relevant time, options were not submitted by the petitioners.

8. Learned advocate Mr. M.M. Desai pointed out that in case of employees, who were working in Secondary Schools, have not given option at the relevant point of time when the scheme was made applicable, but, office had given option at the time of retirement and subsequently, accepted by the State Government and benefits of pension were extended in their favour. Therefore, learned advocate Mr. Desai submitted that same treatment is not given to the present petitioners those who are claiming the benefits of pension.

9. Learned advocate Mr. Desai has relied upon

one recent decision of Apex Court in case of ***Union of India and Another v. S.L. Verma and others*** reported in ***2007 (112) FLR 697*** decided on ***28th November 2006.*** Learned advocate Mr. Desai submitted that in this case also, the question of option not given by the concerned employee has been considered that what would be the legal effect if the option is not given by the employee in time. This aspect has been considered by the Apex Court. The Apex Court has observed that when employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30th September 1987. In that view of the matter, respondent Nos.1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988) had become *ipso-facto* applicable in their case also. It may be

that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise.

10. Therefore, learned advocate Mr. Desai submitted that in light of aforesaid decision of Apex Court and observations made by Apex Court and considering the facts of the present case, when options were invited, petitioners, initially, were not aware about it and subsequently, when options were given but not accepted by the State Government on the ground of that it is not in time and lastly, due to financial burden also, that request was rejected by the State Government.

11. Learned advocate Mr. Desai has relied upon the aforesaid decision. The relevant paragraphs are quoted as under :

"The respondent Nos. 1 to 13 were employees of Bureau of Indian Standards. The said authority was created under the Bureau of Indian Standards Act, 1986. Although a statutory authority, it is said to be under the administrative control of Ministry of Consumer Affairs. Respondent Nos.1 to 13 were members of Contributory Provident Fund Scheme. (CPF Scheme). The respondent No.14 i.e., the Bureau of Indian Standards, which is an Autonomous Body, pursuant to and in furtherance of an Office Memorandum dated 1.5.1987 issued by the Government of India asked its employees to give their option whether to continue under the Provident Fund Scheme or not. The said Office Memorandum dated 1.5.1987 assumes importance in view of the language used therein to which, we intend to immediately advert to. The Office memorandum is prefaced with calling for repeated options in the past asking the employees to switch over to the Pension Scheme. It was mentioned that such option had been asked for on 6.6.1985. The Central Government

notices that despite the same, some of the employees still continued in the CPF Scheme. It further notices the recommendations of the Fourth Central Pay Commission that CPF beneficiaries in service on 1.1.1986 would be deemed to have switched over to the Pension Scheme. On that date, unless specifically opt out to continue under the CPF Scheme. It is not in dispute that the said recommendations of the Fourth Central Pay Commission had been accepted by the Central Government and the same is applicable to the employees of the Respondent No.14. Bureau of Indian Standards. Paragraph 3 and paragraph 3.2 of the said Office Memorandum read as under :

> *"3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to he Pension Scheme.*
>
> *3.2 The employees of the category mentioned above will, however, have an option to*

continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.9.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme."

2. Pursuant to and in furtherance of the said Scheme of the Central Government, the respondent No.14 made a Regulation known as "Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988)", Regulation 16 thereof reads as under :

"16. Pension – The Employees shall be governed by the Central Civil Services (Pension) Rules, 1972 : provided that the employees who had specifically elected to be governed by the Contributory Provident Fund. Rules (India),

1962, immediately before the date of commencement of these regulations shall continue to be governed under the Contributory Provident Fund Scheme."

3. Despite the clear intent and purport of the said office Memorandum dated 1.5.1987, the respondent Nos.1 to 13 herein continued to be treated as if they had still been continuing under the CPF Scheme.

4. The Central Government as also the respondent No.14 – Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to Pension Scheme stating that they purported to have exercised their option for CPF Scheme on the cut off date.

5. The said request of the respondent No.14 was not acceded to by the Ministry of Finance. It was, however, accepted by the respondent No.14 that only 19 employees were left out and the total financial implication therefor would come to about Rs.7.20 lakhs per annum, if all the employees are allowed to switch over to the Pension Scheme. It was made clear that for the said purpose the respondent No.14 would not depend upon the Government grants. Although the Ministry of Consumer Affairs, Food and Distribution agreed with the aforesaid suggestion of the respondent No.14, it appears that the Ministry of Finance did not agree thereto stating:

> *"... In view of the above, we have been advising autonomous bodies under various Ministries/ Departments of the Government of India to continue to follow the CPF Scheme or the autonomous bodies, if they so desire, may work out an annuity, scheme through the life Insurance Corporation of India based on*

voluntary contributions by the employees and without any contribution from the Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may pleased be noted that introduction of pension scheme on GOI pattern to the employees of autonomous bodies should not be agreed to as a rule, any exception in this regard should be referred to this Department"

6. At that juncture, the respondent Nos.1 to 13 approached the High Court. Whereas, the learned Single Judge allowed the writ petition directing that the same would not be subject to any liability on the part of the Union of India, but on an appeal preferred by the Union of India, by reason of the impugned judgment, the Division Bench modified the said order directing as follows :

"Impugned writ Court order dated 22.10.2003 shall stand

modified to the extent that appellants shall consider passing of a conditional approval stipulating that they shall not incur any liability in case respondent No.14 fails to satisfy the pension liability of Respondent Nos.1 to 13 and pass appropriate orders within two months from today. These respondents on their part shall remain bound by all other terms of the writ Court order including the undertaking to be executed by them."

7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter, respondent Nos.1 to 13 in

view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.l to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore,

were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent Nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF Scheme.“

12. I have considered the submissions made by learned advocates Mr. Desai. I have also considered the factual aspect in respect to claim of pensionary benefits by the petitioners.

13. Learned Government Pleader Mr. Sunit Shah with learned AGPs appearing on behalf of respondents – State Authorities submitted that State Government will reconsider the case of petitioners and will also pass appropriate orders within some reasonable time in light of the observations made by the Apex Court as referred above.

14. In this group of petitions, this Court is passing the orders without determination of merits between the parties in respect to claim of pension. The reason behind it is that it is a burden upon the State Government to examine such issue as early as possible in accordance with law. The question is that State Government is not extending the benefit of pension in favour of petitioners and they remained continue as a member in CPF Scheme, however, ultimately, their requests has been rejected only on the ground of which have to shoulder burden of heavy financial liabilities. Therefore, in view of the recent decision of Apex Court in case of ***A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy & Ors.*** Reported in ***2006 AIR SCW 1108*** and also in case of ***Employees State Insurance Corporation v. All India I.T.D.C. Employees Union & Ors.*** reported in ***2006(2) GCD 1430 (SC)***. This Court has power to direct the respondents – State Government to reconsider the case of the petitioners in light of the aforesaid

background and examine the issue within some reasonable time. It is legal obligation on the part of the State Government to consider such cases of denial of pensionary benefit to the petitioners.

15. In light of the above facts as observed by this Court, it is open for the petitioners to make detailed representation, if they so desire, along with the copy of the aforesaid decision of Apex Court in case of ***Union of India and Others v. S.L. Verma and Others*** reported in ***2007 (112) FLR 697*** to the respondents as early as possible.

16. As and when, the respondents – State Government received any representation from the petitioners along with the aforesaid decision of the Apex Court, it is directed to the respondents – State Government to reconsider the matter while examining the earlier representation which has been made by Association and recent one, in light of observations made by the Apex Court in case of

Union of India and Others v. S.L. Verma and Others reported in **2007 (112) FLR 697** and pass appropriate reasoned order in accordance with law within a period of four months from the date of receiving the copy of the said order and communicate the same to each petitioner immediately.

17. It is also directed to the State Government to reconsider the matter with sympathetic approach and to consider the sentimental issue for the concerned employees those who are retiring from the service and not able to get pensionary benefits though other similarly situated employees are getting it and enjoying it.

18. In view of above observation and directions, rule is made absolute to the aforesaid extent in each petition with no order as to costs.

Sd/-
[H.K. RATHOD, J.]

#Dave